

AMENDED IN SENATE JUNE 16, 2010
AMENDED IN SENATE APRIL 28, 2010
AMENDED IN SENATE APRIL 27, 2010
AMENDED IN SENATE MARCH 24, 2010

SENATE BILL

No. 1071

Introduced by Senator DeSaulnier

February 17, 2010

An act to amend Section 11165 of, and to add and repeal Section 11165.05 of, the Health and Safety Code, and to add and repeal Section 17054.8 of, and to add and repeal Part 33 (commencing with Section 70001) of Division 2 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1071, as amended, DeSaulnier. Personal income tax: credit: prescription drugs: controlled substances tax: CURES.

The Personal Income Tax Law authorizes various credits against the tax imposed by that law.

This bill would, on and after January 1, 2011, and before January 1, 2016, authorize a credit against that tax for a person who is 55 years of age or older in an amount equal to the amount paid or incurred for that taxpayer's own medicines or drugs, as described, that is not reimbursable or payable by public or private health insurance plans or by any 3rd party.

Existing law imposes various taxes, including taxes on the privilege of engaging in certain activities. The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges. Existing law also requires the Department

of Justice to maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by all practitioners authorized to prescribe or dispense these controlled substances.

This bill would, on and after January 1, 2011, and before January 1, 2016, impose a tax ~~at the rate of \$0.0025 per pill included in Schedule II, III, or IV upon every manufacturer and importer of controlled substances classified as Schedule II, III, or IV, or other person that makes the first sale in this state of a Schedule II, III, or IV controlled substance upon every manufacturer and importer of a controlled substance classified as Schedule II, III, or IV upon the first sale of that substance at the rate of \$0.0025 for each pill sold.~~ The tax would be administered by the State Board of Equalization and would be collected pursuant to the procedures set forth in the Fee Collection Procedures Law.

The bill would require the board to deposit all taxes, penalties, and interest collected, less refunds and administrative costs, in the CURES Fund, which this bill would create. This bill would require moneys in the fund, upon appropriation by the Legislature, to be allocated to the Department of Justice for the cost of administration of the CURES program, as specified.

This bill would also require a person that manufactures controlled substances classified in Schedule II, III, or IV in this state, or that imports controlled substances classified in Schedule II, III, or IV into this state, to register with the Department of Justice to enable the department to report specified information to the board for purposes of collecting a tax on those persons. Those provisions would remain in effect until January 1, 2016.

Because this bill would expand the application of the Fee Collection Procedures Law, the violation of which is a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislatures finds and declares all of the
2 following:

3 (a) The CURES program is a valuable investigative, preventive,
4 and educational tool for law enforcement, regulatory boards,
5 educational researchers, and the health care community.

6 (b) Each year the CURES program responds to more than 60,000
7 requests from practitioners and pharmacists to (1) help identify
8 and deter drug abuse and diversion through accurate and rapid
9 tracking of Schedule II, III, and IV controlled substances, (2) help
10 practitioners make better prescribing decisions, and (3) cut down
11 on the misuse, abuse, and trafficking of prescription drugs in
12 California.

13 (c) The manufacture and importation of Schedules II, III, and
14 IV controlled substances have had deleterious effects on private
15 and public interests, including the misuse, abuse, and trafficking
16 in dangerous prescription medications resulting in injury and death.
17 The tax that is imposed by this bill on manufacturers and importers
18 of Schedules II, III, and IV controlled substances seeks to mitigate
19 these effects of the drugs by supporting the operation of the
20 CURES program, which has proved a cost-effective tool to help
21 to reduce the misuse, abuse, and trafficking of those drugs.

22 (d) It is the nature of these Schedule II, III, and IV controlled
23 substances that their addictive qualities and the ever present market
24 for their misuse and abuse pose inherent risks to public health that
25 must be systematically addressed, as by the CURES program.
26 Once these products are present in California, ad hoc enforcement
27 of conditions on distribution and criminal and civil sanctions on
28 downstream actors in the distribution system are extraordinarily
29 costly, ineffective, and inefficient means to attempt to control the
30 misuse, abuse, and trafficking of these substances. It is therefore
31 appropriate for manufacturers and importers, which benefit from
32 the commercial markets for these inherently dangerous products
33 with knowledge of their potential for misuse and abuse absent
34 systematic tracking and monitoring, to pay for the cost-effective
35 CURES program.

36 SEC. 2. Section 11165 of the Health and Safety Code is
37 amended to read:

1 11165. (a) To assist law enforcement and regulatory agencies
2 in their efforts to control the diversion and resultant abuse of
3 Schedule II, Schedule III, and Schedule IV controlled substances,
4 and for statistical analysis, education, and research, the Department
5 of Justice shall, contingent upon the availability of adequate funds
6 from the CURES Fund and from the Contingent Fund of the
7 Medical Board of California, the Pharmacy Board Contingent
8 Fund, the State Dentistry Fund, the Board of Registered Nursing
9 Fund, and the Osteopathic Medical Board of California Contingent
10 Fund, maintain the Controlled Substance Utilization Review and
11 Evaluation System (CURES) for the electronic monitoring of the
12 prescribing and dispensing of Schedule II, Schedule III, and
13 Schedule IV controlled substances by all practitioners authorized
14 to prescribe or dispense these controlled substances.

15 (b) The reporting of Schedule III and Schedule IV controlled
16 substance prescriptions to CURES shall be contingent upon the
17 availability of adequate funds from the Department of Justice. The
18 Department of Justice may seek and use grant funds to pay the
19 costs incurred from the reporting of controlled substance
20 prescriptions to CURES. Funds shall not be appropriated from the
21 Contingent Fund of the Medical Board of California, the Pharmacy
22 Board Contingent Fund, the State Dentistry Fund, the Board of
23 Registered Nursing Fund, the Naturopathic Doctor's Fund, or the
24 Osteopathic Medical Board of California Contingent Fund to pay
25 the costs of reporting Schedule III and Schedule IV controlled
26 substance prescriptions to CURES.

27 (c) CURES shall operate under existing provisions of law to
28 safeguard the privacy and confidentiality of patients. Data obtained
29 from CURES shall only be provided to appropriate state, local,
30 and federal persons or public agencies for disciplinary, civil, or
31 criminal purposes and to other agencies or entities, as determined
32 by the Department of Justice, for the purpose of educating
33 practitioners and others in lieu of disciplinary, civil, or criminal
34 actions. Data may be provided to public or private entities, as
35 approved by the Department of Justice, for educational, peer
36 review, statistical, or research purposes, provided that patient
37 information, including any information that may identify the
38 patient, is not compromised. Further, data disclosed to any
39 individual or agency as described in this subdivision shall not be
40 disclosed, sold, or transferred to any third party.

(d) For each prescription for a Schedule II, Schedule III, or Schedule IV controlled substance, the dispensing pharmacy or clinic shall provide the following information to the Department of Justice on a weekly basis and in a format specified by the Department of Justice:

(1) The full name, address, and telephone number of the ultimate user or research subject, or contact information as determined by the Secretary of the United States Department of Health and Human Services, and the gender and date of birth of the ultimate user.

(2) The prescriber's category of licensure and license number; federal controlled substance registration number; and the state medical license number of any prescriber using the federal controlled substance registration number of a government-exempt facility.

(3) Pharmacy prescription number, license number, and federal controlled substance registration number.

(4) NDC (National Drug Code) number of the controlled substance dispensed.

(5) Quantity of the controlled substance dispensed.

(6) ICD-9 (diagnosis code), if available.

(7) Number of refills ordered.

(8) Whether the drug was dispensed as a refill of a prescription or as a first-time request.

(9) Date of origin of the prescription.

(10) Date of dispensing of the prescription.

SEC. 3. Section 11165.05 is added to the Health and Safety Code, to read:

11165.05. (a) A person that manufactures controlled substances classified in Schedule II, III, or IV in this state, or that imports controlled substances classified in Schedule II, III, or IV into this state, shall register with the Department of Justice to enable the department to report to the State Board of Equalization the persons subject to the tax imposed pursuant to Part 33 (commencing with Section 70001) of Division 2 of the Revenue and Taxation Code.

(b) A person required to register with the department shall file an annual report with the department. The annual report shall be due on or before January 1, 2011, and on or before January 1 each year thereafter, and shall provide the name, address, and telephone number of the person required to register.

(c) A person required to register with the department shall also file a quarterly report with the department. The quarterly report shall be due on the last day of the month following each quarterly period and shall provide all of the following information:

(1) The number of Schedule II, III, or IV pills the registrant has sold in this state during that quarterly reporting period.

(2) The number of Schedule II, III, or IV pills the registrant has imported into this state during that quarterly reporting period.

(3) The number of Schedule II, III, or IV pills the registrant has sold, transferred, or otherwise furnished to other persons in this state during that quarterly reporting period.

(4) Any other information the department deems necessary for the purpose of administering this section.

(d) Each registrant that is required to provide the information required by this section may be subject to audit by the department.

(e) On the last day of each month following the due date for filing a quarterly report pursuant to subdivision (d), the department shall send to the State Board of Equalization a report containing all of the following information:

(1) The name, address, and telephone number of each person required to register with the department pursuant to this section, and the necessary information regarding who owes the tax imposed pursuant to Part 33 (commencing with Section 70001) of Division 2 of the Revenue and Taxation Code on each Schedule II, III, or IV pill sold in this state in the amount of \$0.0025 per pill for the previous quarterly period.

(2) The number of Schedule II, III, or IV pills each registrant manufactured in this state or imported into this state.

(f) This section shall remain in effect until January 1, 2016, and as of that date is repealed.

SEC. 4. Section 17054.8 is added to the Revenue and Taxation Code, to read:

17054.8. (a) For each taxable year beginning on or after January 1, 2011, and before January 1, 2016, there shall be allowed to a taxpayer who is 55 years of age or older as a credit against the "net tax," as defined in Section 17039, an amount equal to that amount paid or incurred by the taxpayer during the taxable year for that taxpayer's own medicine or drugs, as described in Section 213(b) of the Internal Revenue Code, that was not reimbursable

1 or payable by public or private health insurance plans or by any
2 third party.

3 (b) The taxpayer shall claim the credit on a timely filed original
4 return.

5 (c) The Franchise Tax Board may prescribe rules, guidelines,
6 or procedures necessary or appropriate to carry out the purposes
7 of this section. Chapter 3.5 (commencing with Section 11340) of
8 Part 1 of Division 3 of Title 2 of the Government Code shall not
9 apply to any rule, guideline, or procedure prescribed by the
10 Franchise Tax Board pursuant to this section.

11 (d) In the case where the credit allowed by this section exceeds
12 the “net tax,” the excess may be carried over to reduce the “net
13 tax” for the following year, and the succeeding seven years, until
14 the credit is exhausted.

15 (e) (1) The total amount of credits that may be allowed pursuant
16 to this section shall not exceed the total amount of taxes collected
17 pursuant to Part 33 (commencing with Section 70001) of Division
18 2 for any taxable year.

19 (2) The intent of paragraph (1) is to ensure that the act adding
20 this section does not produce a net revenue gain in state taxes, and
21 the board and the Franchise Tax Board shall cooperate in
22 exchanging information for this purpose.

23 (f) This section shall remain in effect only until December 1,
24 2016, and as of that date is repealed.

25 SEC. 5. Part 33 (commencing with Section 70001) is added to
26 Division 2 of the Revenue and Taxation Code, to read:

27
28 PART 33. CONTROLLED SUBSTANCES TAX LAW
29

30 70001. This part shall be known and may be cited as the
31 Controlled Substances Tax Law.

32 70002. For purposes of this part:

33 (a) “CURES program” means the Controlled Substance
34 Utilization Review and Evaluation System program described in
35 Section 11165 of the Health and Safety Code.

36 (b) “Importer” means a person that imports *into this state*
37 controlled substances classified in Schedule II, III, or IV ~~into this~~
38 ~~state pursuant to Chapter 2 (commencing with Section 11053) of~~
39 *Division 10 of the Health and Safety Code*, for sale or distribution

1 in this state, including, but not limited to, a distributor, retailer,
2 or wholesaler.

3 ~~(e) “Manufacturer” means a person that manufactures controlled~~
4 ~~substances classified in Schedule II, III, or IV sold in this state,~~
5 ~~either directly or indirectly.~~

6 (c) (1) “Manufacturer” means and includes every person who
7 prepares, derives, produces, compounds, or repackages controlled
8 substances classified in Schedule II, III, or IV pursuant to Chapter
9 2 (commencing with Section 11053) of Division 10 of the Health
10 and Safety Code, except a pharmacy that manufactures on the
11 immediate premises where the controlled substance is sold to the
12 ultimate consumer.

13 (2) Notwithstanding paragraph (1), “manufacturer” shall not
14 mean the following:

15 (A) A pharmacy compounding a drug for parental therapy,
16 pursuant to a prescription, for delivery to another pharmacy for
17 the purpose of delivering or administering the drug to the patient
18 or patients named in the prescription, provided that neither the
19 components for the drug nor the drug are compounded, fabricated,
20 packaged, or otherwise prepared prior to receipt of the
21 prescription.

22 (B) A pharmacy that, at a patient’s request, repackages a drug
23 previously dispensed to a patient, or to the patient’s agent,
24 pursuant to a prescription.

25 (d) “Quarterly report” means the report that a registrant is
26 required to file with the Department of Justice pursuant to Section
27 11165.05 of the Health and Safety Code.

28 (e) “Registrant” means a manufacturer or importer of controlled
29 substances classified in Schedule II, III, or IV that is required to
30 annually register and report certain information to the Department
31 of Justice pursuant to Section 11165.05 of the Health and Safety
32 Code.

33 ~~70003. On and after January 1, 2011, a tax is hereby imposed~~
34 ~~at the rate of \$0.0025 per pill included in Schedule II, III, or IV~~
35 ~~upon every manufacturer and importer of controlled substances~~
36 ~~classified as Schedule II, III, or IV, or other person that makes the~~
37 ~~first sale in this state of a Schedule II, III, or IV controlled~~
38 ~~substance. The tax imposed by this part is for the purpose of~~
39 ~~reimbursing the Department of Justice for the cost of administering~~
40 ~~the CURES program, which provides for the electronic monitoring~~

1 of the prescribing and dispensing of controlled substances classified
2 in Schedule II, III, or IV.

3 70003. (a) *On and after January 1, 2011, every manufacturer*
4 *and every importer shall pay a tax upon the first sale in this state*
5 *of controlled substances classified as Schedule II, III, or IV*
6 *pursuant to Chapter 2 (commencing with Section 11053) of*
7 *Division 10 of the Health and Safety Code at the rate of*
8 *one-quarter of one cent (\$0.0025) for each pill sold.*

9 (b) *The purpose of the tax imposed by this part is to reimburse*
10 *the Department of Justice for the cost of administering the CURES*
11 *program, which provides for the electronic monitoring of the*
12 *prescribing and dispensing of controlled substances classified in*
13 *Schedule II, III, or IV.*

14 70004. The board shall administer and collect the tax imposed
15 by this part pursuant to the Fee Collection Procedures Law (Part
16 30 (commencing with Section 55001)). For purposes of this part,
17 the references in the Fee Collection Procedures Law to “fee” shall
18 include the tax imposed by this part and references to “feepayer”
19 shall include a person required to pay the tax imposed by this part.

20 70005. Each person required to pay the tax shall prepare and
21 file with the board a return in the form prescribed by the board
22 containing information as the board deems necessary or appropriate
23 for the proper administration of this part. The return shall be filed
24 on or before the last day of the calendar month following the
25 calendar quarter to which it relates, together with a remittance
26 payable to the board for the amount of tax due for that period.

27 70006. The board may prescribe those forms and reporting
28 requirements as are necessary to implement the tax, including, but
29 not limited to, information regarding the total amount of tax due.

30 70007. (a) (1) The CURES Fund is hereby created in the State
31 Treasury. The CURES Fund shall consist of all taxes, interest,
32 penalties, and other amounts collected pursuant to this part, less
33 refunds and reimbursement to the board for expenses incurred in
34 the administration and collection of the tax.

35 (2) Money in the CURES Fund shall, upon appropriation by the
36 Legislature, be used to reimburse the Franchise Tax Board for
37 administrative costs related to Section 17054.8.

38 (b) All moneys in the CURES Fund less refunds and
39 reimbursement pursuant to subdivision (a), shall, upon
40 appropriation by the Legislature, be allocated to the Department

1 of Justice for the following, *with particular priority given to*
2 *paragraph (3)*:

3 (1) The cost of the administration of the CURES program as
4 required by this section and Section 11165.05 of the Health and
5 Safety Code.

6 (2) The cost of the maintenance of, and any improvements to,
7 the CURES program.

8 (3) The cost of education and outreach relating to the CURES
9 program *and increasing the real-time access to the Prescription*
10 *Drug Monitoring Program (PDMP) system within the CURES*
11 *program*.

12 (4) The cost of the investigation of abuses of the CURES
13 program.

14 70008. This part shall remain in effect only until January 1,
15 2016, and as of that date is repealed.

16 SEC. 6. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 the only costs that may be incurred by a local agency or school
19 district will be incurred because this act creates a new crime or
20 infraction, eliminates a crime or infraction, or changes the penalty
21 for a crime or infraction, within the meaning of Section 17556 of
22 the Government Code, or changes the definition of a crime within
23 the meaning of Section 6 of Article XIII B of the California
24 Constitution.

25 SEC. 7. This act provides for a tax levy within the meaning of
26 Article IV of the Constitution and shall go into immediate effect.